

# DECLARATION OF EASEMENT Access and Parking

IMP FD SURE \$	28.00
RECORDING FEE	28.00
TOTAL	48.00
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JJR DS	81k # 1812
Nov 19, 2003	12:36 PM

THIS DECLARATION OF EASEMENT (this "Agreement") is made as of this 12<sup>th</sup> day of November, 2003 by the CITY OF ABERDEEN, MARYLAND, a body politic and corporate with an address of P.O. Box 70, Aberdeen, Maryland 21001 (the "City") and TUFTON PROFESSIONAL BASEBALL LLC, a Maryland limited liability company with an address of 10801 Tony Drive, Suite A, Lutherville, Maryland 21093 ("TPB") (the City and TPB are herein, collectively, the "Grantor") for the benefit of the City and any subsequent owners and users (the "Lot 6 Users") of Lot 6 (defined below).

## Explanatory Statement

A. The City is the owner of a fee simple interest in that real property located in the City of Aberdeen, Maryland, which is known as Lot 1, containing 22.6228 ± acres ("Lot 1"); Lot 2, containing 33.8016 ± acres ("Lot 2"); and, Lot 4 containing approximately 25.5501 ± acres ("Lot 4"), and being more particularly described on the subdivision plat entitled "Final Plat - Long Property Subdivision", which subdivision plat was recorded among the Plat Records of Harford County, Maryland at Liber C.G.H. 106, Folio 40, on December 6, 2001. The City is also the owner of a fee simple interest in that real property located in the City of Aberdeen, Maryland, which is known as Lot 3, containing approximately 18.591 ± acres ("Lot 3"); Lot 5 containing approximately 4.403 ± acres ("Lot 5"); and, Lot 6 containing approximately 4.867 ± acres ("Lot 6"), and being more particularly described on the subdivision plat entitled "Revised Lots 3 and 4 - Final Plat, Long Property Subdivision", which subdivision plat was recorded among the Plat Records of Harford County, Maryland at Liber C.G.H., Folio 55, on April 5, 2002.

B. The City has constructed on Lot 2 a minor league baseball stadium (the "Minor League Stadium").

C. The City and TPB entered into a Concession Agreement dated December 7, 2000 (the "Concession Agreement") with respect to the use of Lot 2.

D. The City has entered or will enter into an agreement (the "Lot 6 Agreement") with respect to the use of Lot 6.

E. The parties contemplate that a youth-league baseball stadium (the "Youth Stadium") will be constructed on Lot 6. In connection with the use of the Youth Stadium, the parties desire to provide for parking on Lot 2 for the benefit of Lot 6. Thus, for purposes of the orderly development and use of Lot 2 and Lot 6 (hereinafter, collectively, the "Lots"), the parties desire to enter into this Agreement and to subject Lot 2 to the terms of this Agreement.

NOW, THEREFORE, in consideration of the Explanatory Statement which is incorporated by reference herein and deemed a substantive part of this Agreement, the mutual covenants and agreements of the parties hereto, and for other good and valuable consideration,

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the receipt and sufficiency of which are hereby acknowledged, the City, as owner of Lot 2 and Lot 6, and TPB pursuant to its interest with respect to Lot 2 under the Concession Agreement, hereby declare that Lot 2 shall be subject to the Access Easement (hereinafter defined) and the Parking Easement (hereinafter defined) and the covenants hereinafter set forth, and the Access Easement and Parking Easement (collectively, the "Easements") shall be binding upon the owner and users from time to time of Lot 2 to the end that the Easements and the covenants herein shall run with, bind and burden said Lot 2 to the terms of this Agreement for the benefit of the Lot 6 Users, subject to the covenants hereinbelow set forth. The Grantor hereby declares and any party who shall hereafter take title to Lot 2 shall be deemed to have covenanted and agreed as follows:

1. (a) Grantor does hereby establish and create, from the date of this Agreement for the use and benefit of Lot 6, but in common with all rights of the users of Lot 2, and for the benefit of tenants, subtenants, licensees, occupants and invitees to and of Lot 6 a perpetual and non-exclusive easement appurtenant to Lot 6 (herein referred to as the "Access Easement") for unrestricted ingress and egress, both pedestrian and vehicular, upon and over the Access Easement Area (hereinafter defined) during the times described herein. For purposes of this Agreement, the "Access Easement Area" shall be deemed to be those entranceways from Long Drive and over Lot 2 now or hereafter existing and designated as entranceways, roadways or sidewalks to and from the parking facilities now or hereafter located on Lot 2 (the "Parking Facilities")

(b) In furtherance of, and not in limitation of, the easement created under clause 1(a) above, Grantor hereby establishes and creates, from the date of this Agreement, for the use and benefit of Lot 6, but in common with the rights of the users of Lot 2, and the tenants, subtenants, licensees, occupants and invitees to and of Lot 6 from time to time, a perpetual and non-exclusive right, license and privilege to use any and all driveways, walkways, roadways, pavements or other surface improvements, curbs and other structures and devices, including lighting, vegetation, storm drains and other similar items which directly support and benefit the Parking Facilities (the "Improvements") existing now or hereafter constructed within the Access Easement Area or the Parking Easement Area (defined below).

2. (a) Grantor does hereby establish and create, from the date of this Agreement for the use and benefit of Lot 6 and for the benefit of the Lot 6 Users, and subject to the further provisions of this Section 2, a perpetual and non-exclusive easement (the "Parking Easement") appurtenant to Lot 6 for the parking of eight hundred seventy-five (875) vehicles (the "Youth League Spaces") of which a certain number shall be Lot 6 VIP Spaces (as defined below) in the approximate location shown on the drawing attached hereto as Exhibit "A" (the "Parking Easement Area").

(b) The parties acknowledge that the Parking Facilities currently existing on Lot 2 consist of approximately two thousand two hundred (2,200) parking spaces (the "Parking Spaces"), including a special access lot consisting of approximately three hundred (300) spaces (the "VIP Spaces") and an adjoining surface area of approximately one thousand nine hundred (1,900) parking spaces (the "Common Spaces"). The parties further acknowledge that the City shall always have first priority on any of the Parking Spaces. Notwithstanding this, and to the extent not required by the City, on any dates (a "Dual Event Date") on which there is both an event at the Youth Stadium (a "Youth Stadium Event") and an event at the Minor League Stadium (a "Stadium

Event"), the Lot 6 Users shall be entitled to at least one hundred (100) of the three hundred (300) VIP Spaces (the "Lot 6 VIP Spaces"), with the balance of the Youth League Spaces to be available among the Common Spaces. On those occasions when there is no Youth Stadium Event, then users of the Minor League Stadium shall be entitled to the use of up to two hundred ninety (290) of the VIP Spaces, it being understood that there will always be available to Lot 6 Users between the hours of 7:00 a.m. to 6:00 p.m. on weekdays at least ten (10) Lot 6 VIP Spaces regardless of whether a Youth League Event is occurring. By way of example and in further clarification of the City's priority rights as to the Parking Spaces, the parties acknowledge that if, on a Dual Event Date, the Stadium Event requires any more of the Parking Spaces (other than the ten (10) Lot 6 VIP Spaces) be used by the sponsor of the Stadium Event in order to comply with any directive from the Director of Planning and Community Development for the City of Aberdeen consistent with recognized seating to parking ratios for stadium events, then the Lot 6 Users shall be obligated to make alternate parking arrangements at parking facilities other than those on Lot 2. For example, if, on a Dual Event Date, a Stadium Event requires that 1,800 parking spaces be available on Lot 2, then the Lot 6 Users shall be entitled to only 100 spaces as Youth League Spaces during such event and will need to provide alternate parking should the Lot 6 Users need additional parking.

(c) The parties acknowledge that the Youth Stadium will be the site of the Cal Ripken World Series (the "Series"). Grantor acknowledges that, notwithstanding anything to the contrary herein, for the two (2) week period of the Series in late summer of each year, Lot 6 shall have the right to all of the Parking Spaces including the VIP Spaces.

(d) Because the City may choose to grant certain parking rights with respect to the Parking Facilities to users of Lots 1 or 4, the parties hereto desire to set forth an order of priority as to use of the Parking Facilities. Except with respect to the ten (10) Lot 6 VIP Spaces to made available during the hours and on the days set forth above, and except with respect to the Series use, Lot 2 shall have the right to make use of the entire Parking Facilities (including the Youth League Spaces) to the extent, and solely to the extent, such use is required by any directive from the Director of Planning and Community Development for the City of Aberdeen consistent with recognized seating to parking ratios for stadium events. In all other respects, Lot 6 shall have the rights to all the Youth League Spaces and all the Parking Spaces during the Series and shall not be under any obligation to give up use of any of such spaces for use of the Parking Facilities by users of Lot 1 or Lot 4.

(e) For purposes of determining any fees to be charged in connection with the Youth League Spaces, the use of such Youth League Spaces shall be deemed to be being used as though they were being used for a Franchisor Event under the Concession Agreement.

3. Prior to any use of the Parking Easement or the Access Easement, Grantor shall be provided with a commercial general liability policy of insurance which will adequately and sufficiently protect the Grantor, their respective agents, representatives and servants from losses arising directly or indirectly from the Lot 6 Users' use of the Easements. The Grantor shall be named on such insurance certificate as an additional insured party. The limits of such policy shall be generally acceptable to Grantor, which acceptance shall not be unreasonably withheld or delayed. A certificate of such insurance shall be delivered to the Grantor prior to commencement of the use of the Easements and upon each renewal of such policy.



4 Subject to the terms of the Concession Agreement and the Lot 6 Agreement, the respective owners from time to time of the Lots shall be jointly responsible for the costs (the "Maintenance Costs") of repairs and maintenance of the Improvements (including the Parking Facilities) now or hereafter constructed within the applicable Easement Area; provided, however, that if such maintenance and upkeep shall be necessary as a result of the negligence or willful act of any such owner, or its agents, employees, invitees, licensees, tenants, successors or assigns, such negligent party shall be solely responsible for the costs thereof. With respect to the maintenance costs of the character described in Section 5.01 of the Concession Agreement (the "Annual Maintenance Costs"), the Annual Maintenance Costs shall be shared between Lot 2 and Lot 6, with Lot 6 being responsible for that portion of such Annual Maintenance Costs as equals a fraction, the numerator of which is the number of Youth Stadium Events in the applicable year and the denominator of which is 365, or on such other cost sharing arrangement as may be otherwise determined in good faith between TPB and the Lot 6 User named in the Lot 6 Agreement (the "Youth Stadium Operator"). If the parties cannot reach an agreement as to the sharing of such costs within a reasonable period of time after the need therefor is required, the accountant then preparing the financial records for TPB shall make such determination. It shall be TPB's obligation, in accordance with the Concession Agreement, to undertake all such necessary maintenance work initially, the applicable portions of which costs shall then be billed to the Youth Stadium Operator on an annual basis. Reimbursement therefor shall be made within sixty (60) days after receipt of a reasonably detailed statement from TPB reflecting such annual maintenance costs. With respect to the capital improvements and major maintenance costs of the character described in Section 5.02 of the Concession Agreement (the "Capital Maintenance Costs"), the Capital Maintenance Costs shall be shared by Lot 2 and Lot 6, with Lot 6 being responsible for that portion of such Capital Maintenance Costs as equals the average fraction for the calendar years preceding the year in which the Capital Maintenance Costs are incurred, the numerator of which is the sum of (a) 3,650 and (b) 865 multiplied by the number of Youth Stadium Events for which the Parking Facilities were used by the Youth Stadium Operator during such calendar year and the denominator of which is the product obtained by multiplying 2190 by the number of all events which utilized the Parking Facilities during such calendar year. The City shall bill the Youth Stadium Operator for its share of Capital Maintenance Costs, which bill shall be accompanied by reasonable documentation of the Capital Maintenance Costs. Reimbursement by the Youth Stadium Operator shall be made within sixty (60) days after receipt of a reasonably detailed statement from the City reflecting such Capital Maintenance Costs.

5. The Grantor covenants and agrees that said Access Easement Area and Parking Easement Area shall be kept in a state of good order and repair and that all of the work performed in and about the Access Easement Area or Parking Easement Area, as the case may be, will be done in a good and workmanlike manner, in conformity with all applicable code requirements and regulations of the City of Aberdeen, State and Federal Governments, and in a neat, timely, and orderly manner.

6. Anything contained in this Agreement to the contrary notwithstanding, the designation within the Access Easement Area of a street, road, way, avenue, or otherwise shall not be deemed or construed to be a dedication of same to the public and Grantor, for itself, its

successors and assigns, does hereby reserve and retain all rights in and to the bed of same, except as specifically provided otherwise

7. The Grantor and the Youth Stadium Operator (each, as the case may be, herein an "Indemnitor") shall indemnify and defend the others and their respective managers and agents (the "Indemnitee") against, and hold the Indemnitee harmless from, any and all claims, actions, damages, liabilities or expenses in connection with any and all injuries to or deaths of persons, or damage to property, suffered by the Indemnitee or its managers, agents, employees or invitees, or any other person or entity (a) arising out of (i) the construction, installation, repair, maintenance, replacement or removal of the Indemnitor's facilities or equipment by the Indemnitor, its agents, employees or invitees, (ii) the presence of the Indemnitor's facilities or equipment, and/or (iii) the exercise or use, passive or active, of the applicable Easement Area by the Indemnitor, its agents, employees or invitees, or (b) caused by any negligent act or omission of the Indemnitor, its agents, employees or invitees, except to the extent caused by any negligent act or omission of the Indemnitee, its agents, employees or invitees.

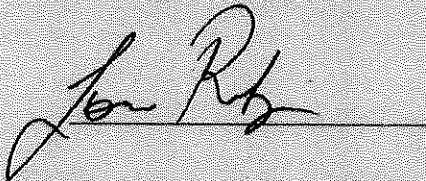
8. The Easements established, created and granted hereby shall be for the sole benefit of, and solely restricted to, each owner from time to time of the Lots, their agents, servants, employees, invitees, licensees, tenants, subtenants, successors, assigns and all other parties lawfully upon either of the Lots.

9. The Easements created and granted hereby shall create mutual benefits and burdens upon each of the Lots, running with the land thereof, and shall inure to the benefit of and bind the respective successors and assigns of Grantor as to Lot 2 and the City and the Youth Stadium Operator as to Lot 6.

WITNESS the hands and seals of the Grantor:

WITNESS/ATTEST:

TUFTON PROFESSIONAL BASEBALL LLC



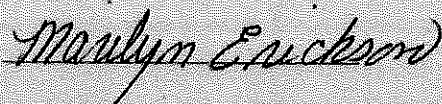
By



(SEAL)

Chris Flannery  
Authorized Person

CITY OF ABERDEEN



By



(SEAL)

Douglas S. Wilson, Mayor

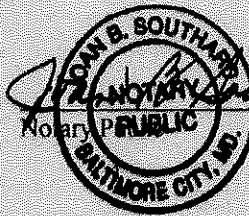
[NOTARIES ON FOLLOWING PAGE]



STATE OF MARYLAND, CITY/COUNTY OF Baltimore, TO WIT:

I HEREBY CERTIFY that on this 10<sup>th</sup> day of November, 2003, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Chris Flannery, an Authorized Person for TUFTON PROFESSIONAL BASEBALL LLC, who acknowledged the foregoing Declaration of Easement to be the act and deed of said limited liability company.

WITNESS my hand and Notarial Seal.

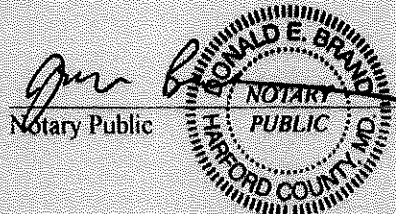


My Commission expires: 4/1/2006

STATE OF MARYLAND, CITY/COUNTY OF HARFORD, TO WIT:

I HEREBY CERTIFY that on this 7<sup>th</sup> day of November, 2003, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Douglas S. Wilson, Mayor for the CITY OF ABERDEEN, who acknowledged the foregoing Declaration of Easement to be the act of said municipal entity.

WITNESS my hand and Notarial Seal.



My Commission expires: 12-1-03

The undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland, hereby certifies that this instrument has been prepared by or under his supervision.

MY COMM. EXPS.  
DEC. 1, 2003

Donald E. Brand  
Donald E. Brand

**AFTER RECORDATION, PLEASE RETURN TO:**

**Donald E. Brand, Esquire**  
**City of Aberdeen**  
**P. O. Box 70**  
**60 North Parke Street**  
**Aberdeen, Maryland 21001**  
**Phone: 1-410-297-4218**  
**Baltimore No. 410-575-6569**



